

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

JOSEPH T. DOBKIN and
LAURIE DOBKIN McDERMOTT,

Plaintiffs,

Civil Action No. 14-C-91K

v.

Judge Karl

DAVID B. SHRIVER,

Defendant.

COMPLAINT

1. The plaintiff, Joseph T. Dobkin ("Dobkin"), is a resident of Wheeling, Marshall County, West Virginia.
2. The plaintiff, Laurie Dobkin McDermott ("Dobkin McDermott"), is a resident of Wheeling, Ohio County, West Virginia. She is the sister of Joseph T. Dobkin.
3. The defendant, David B. Shriver ("Shriver"), maintains a residence in Wheeling, Ohio County, West Virginia. He is the first cousin of the plaintiffs.
4. Up to the time of the events described in this Complaint, the plaintiffs felt comfortable placing trust in the defendant, given the familial relationship.
5. In June, 2001, Dobkin and Shriver, with substantial assistance from Dobkin McDermott, formed a closed corporation that they named Action Gaming, Incorporated ("Action"), to serve as a Limited Video Lottery Operating Company pursuant to West Virginia's "Limited Video Lottery Act," i.e., West Virginia Code 29-22B-101 et. seq.
6. The purpose of the company was to operate limited video lottery units in retail locations in several counties in West Virginia, including but not limited to Marshall County.

Since the inception of the Limited Video Lottery program in 2001, through the date of the filing of this complaint, Action has furnished limited video lottery units to various retail locations situated in Marshall County, West Virginia.

7. The majority of retail locations where Action was able to obtain contracts to locate limited video lottery units were obtained in significant part due to relationships that the plaintiffs' father, John ("Jack") Dobkin, had developed with the location owners.

8. Since its formation, Action's principal offices and headquarters have been located at 68 — 18th Street, Wheeling, West Virginia, on property owned in part by the plaintiffs' father, John ("Jack") Dobkin.

9. Dobkin and Shriver formed and operated Action as equal 50%/50% shareholders. Although there was no formal issuance of shares of stock in Action until 2008, documents filed over the years with the West Virginia Secretary of State, West Virginia Lottery Commission, and Action's state and federal tax returns, verify the fact that Dobkin and Shriver were equal shareholders in Action from 2001 through 2008.

10. From 2001 through 2008, both Dobkin and Shriver received salaries and dividend disbursements in proportion to their 50/50 percentages of stock ownership. Dobkin served as the corporation's President, and Shriver served as Vice President.

11. In 2008, at Shriver's urging, Dobkin agreed to reconfigure the percentages of stock ownership in Action. As part of the agreement that Shriver urged, Dobkin agreed that from his 50% share of stock ownership, 10% of his shares would be disbursed to Shriver, without Shriver paying any monetary consideration, and 10% would be disbursed to Dobkin's sister, Laurie Dobkin McDermott, at her option, as consideration for her legal services to various family businesses for more than twenty years, including Action. The agreement that

Shriver urged Joseph T. Dobkin to accept what was intended to result in a stock ownership percentage reconfiguration whereby Shriver would own the majority of Action's shares (i.e., 60%), Dobkin would own 30% of the shares and Dobkin's sister, Laurie Dobkin McDermott, would own 10% of the company's shares at her option.

12. Dobkin agreed to give Shriver 10% of his shares of stock ownership per Shriver's urging, without any monetary consideration being paid to Dobkin by Shriver, in reliance upon Shriver's representation that salaries and profit disbursements would continue to be made based on percentages of stock ownership, as had been the case to that point. Dobkin also agreed to give up shares of his stock to Shriver, and to reduce his ownership percentage, without any monetary consideration being paid by Shriver, in reliance on the part of the agreement that provided that his sister would receive 10% of the shares of Dobkin's stock at her option and the benefits of stock ownership. Dobkin and Shriver felt that this would be just consideration for her assistance to family businesses over the years, including Action, that enabled Action to exist and become a viable and financially successful company. The aforesaid material representations made by Shriver, which Dobkin relied on to agree to reduce his 50% share of ownership and reconfigure the percentages of ownership, without any monetary consideration being paid by Shriver, were subsequently proven to be false and fraudulent, as developed below.

13. Dobkin and Shriver were also 50%/50% shareholders in a West Virginia corporation called Cousins Realty, Inc. The purpose of the company was to acquire retail locations, by ownership or lease, where limited video lottery units owned by Action could be placed. Cousins Realty was subject to the reconfiguration agreement described above. Dobkin agreed that from his 50% share of stock ownership, 10% of his shares would be

disbursed to Shriver, without Shriver paying any monetary consideration to Dobkin, and 10% of his shares would be disbursed to his sister, Dobkin McDermott, at her option, as consideration for her legal services to various family businesses for more than twenty years. Pursuant to the reconfiguration agreement, Shriver would own the majority of Cousin's shares (60%), Dobkin would own 30% of Cousin's shares, and Dobkin's sister, Laurie Dobkin McDermott, would own 10% of the company's shares at her option. Dobkin was induced to agree to this reconfiguration of the percentage of stock ownership in Cousin's, without monetary consideration being paid by Shriver, by the same material representations that were made by Shriver with respect to Action. As was the case with Action, those material representations ultimately proved to be false and fraudulent.

14. Laurie Dobkin McDermott exercised her option to receive 10% of the stock of Action and Cousin's in 2010, which came entirely from her brother's shares of ownership, and those shares of stock were ultimately issued to her in November of 2010.

15. After Shriver was given an additional 10% of the stock in the companies out of Joseph T. Dobkin's percentage share of ownership, without monetary consideration, which made Shriver the majority owner of Action's and Cousin's shares, Shriver seized complete control of all facets of each company's affairs, management, control and direction; ultimately denied the minority shareholders any meaningful voice in the management, direction and operation of the companies; failed to inform the minority shareholders of matters of significant financial and legal consequence to the companies; deprived the minority shareholders of benefits proportionate to their stock ownership interests and percentages; directed benefits to himself that were exorbitant and grossly disproportionate to the shareholders' respective percentages of stock ownership; directed the companies in excessive, wasteful and imprudent

expenditures, intended in significant part to deprive the minority shareholders of the benefits of stock ownership in proportion to the shareholders' percentages of ownership; and directed Action to engage in numerous instances of conduct that the West Virginia Lottery Commission considers and would consider to be inconsistent with and repugnant to regulations and laws that pertain to West Virginia Limited Video Lottery and other pertinent subjects, thereby creating significant legal and financial sanctions and exposure for Action, as well as damage to the public perception of the company resulting from media publication of some of the activities that Shriver led the company into, that resulted in investigation and sanctions by the West Virginia Lottery Commission. Shriver's conduct towards the minority shareholders has been oppressive in nature, motivated by animus and malice, and has been ongoing and continuous through the date of the filing of this case.

16. Without the knowledge or assent of any of the minority shareholders, at some point after Shriver seized complete managerial control of Action, on a date that is presently unknown, he unilaterally increased his salary to unreasonable and excessive levels that were grossly disproportionate to the shareholders' respective percentages of stock ownership. During the summer of 2012 the minority shareholders first learned that Shriver had unilaterally escalated his salary to a grossly excessive amount more than six times the amount of Joseph T. Dobkin's annual salary, in direct contradiction of material representations that Shriver made to Dobkin to lure Dobkin into the aforesaid ownership percentage reconfiguration agreement as described above; namely, that salaries and profit disbursements would be made in proportion to the shareholders' percentage of stock ownership.

17. Shriver's unauthorized and grossly excessive salary increase was perpetrated in an intentionally secretive manner. He did not inform the other shareholders of his salary

escalations, and financial documents that would have revealed the grossly excessive escalations amount of Shriver's excessive salary were only inadvertently made available to Action's minority shareholders in July, 2012 when they finally received certain documentation from the company's accountant at that time, after repeated requests.

18. Upon discovery of Shriver's salary escalation to a figure more than six times Dobkin's salary, the minority shareholders indicated their disapproval and requested that Shriver's excessive salary be reduced. Shriver ignored the request the minority shareholders made at that time, and the subsequent and continuous requests that have been made through the date of filing of this complaint, and has continued to take from Action a grossly excessive annual salary that is more than six times Dobkin's salary.

19. Shriver's excessive salary escalation was intended not only to enrich and pay himself an exorbitant amount, well in excess of what would be a fair and reasonable salary for his position, but was also intended to greatly reduce the amount of funds that otherwise would have been available to disburse as dividends to the shareholders, which was a very significant motivating factor to Shriver. Shriver's intentions and efforts to oppress and deny the minority shareholders from benefits of ownership proportionate to their stock ownership percentages were motivated by malice and animus that he holds towards the minority shareholders, and his denial of benefits of ownership proportionate to the minority shareholders percentage of ownership in the companies has continued through the present time, notwithstanding the repeated, ongoing and continuous protests of the minority shareholders.

20. In addition to diverting and directing substantial corporate revenues of Action to himself in the form of a grossly excessive annual salary along with disbursements and other benefits, Shriver nearly doubled Action's expenses beginning in 2010, in a reckless and

excessive spending pattern that has continued through the filing of this complaint, in furtherance of his intent to deplete the amount of company revenues available for dividend distributions to the minority shareholders and deprive them of the benefits of stock ownership in proportion to their percentages of stock ownership. As part of this pattern of reckless and excessive spending, Shriver has repeatedly (1) poured large sums of corporate funds into a number of unnecessarily lavish limited video lottery retail locations without the assent of minority shareholders, expenditures that in many instances may not have been in accordance with certain statutes and regulations that apply to West Virginia Limited Video Lottery, and were imprudent and unsound business decisions for any number of reasons, including but not limited to the fact that the reasonably expected financial returns would not seem to logically justify and support said expenditures; (2) spent exorbitant corporate sums on various types of equipment, devices, machinery and tools that were not reasonable, necessary or prudent for Action to purchase, but were instead purchased in part for the personal benefit of Shriver, in furtherance of his intention to minimize the amount of company profits, revenues or funds that might otherwise be available for dividend distributions to the minority shareholders for whom he holds extreme animus and malice; and (3) spent exorbitant amounts of corporate funds on highly questionable, curious items like "retailer expenses" (e.g., \$658,139.12 through the first eight months of 2013) and stuffed animals (e.g., \$150,302.21 through the first eight months of 2013), once again in furtherance of his intention to minimize the amount of company profits that might otherwise be available for dividend distributions to shareholders, which Shriver felt no great need to receive since he was unilaterally directing Action to pay himself an exorbitant annual salary more than six times what Dobkin was being paid.

21. Upon seizing total control of Action Gaming, Shriver also initiated a pattern of outrageous and reprehensible conduct and behavior towards Joseph T. Dobkin, to harass and oppress his cousin and partner, Dobkin, in an effort to cause him emotional distress and to not want to be involved with Action Gaming any longer. Shriver's pattern of outrageous, oppressive and reprehensible harassment included, but is not limited to, accusing Dobkin, among other things, of being a thief and lazy employee. It is believed that Shriver has repeated allegations of this nature to various individuals, including employees of Action, which has undermined Dobkin's status as one of the owners of the company. Shriver's conduct in this regard has caused Dobkin great emotional and physical distress.

22. Despite the fact that the financial condition of Action and Cousin's would enable scheduled, periodic dividend disbursements to the shareholders, Shriver has refused the minority shareholders repeated requests for scheduled, periodic dividend disbursements in proportion to the shareholders' percentage of ownership. Shriver, again, is not financially motivated to direct the companies to declare a shareholder dividend disbursement, because he directs Action to pay himself a grossly excessive salary through Action that is more than six times what Dobkin receives, along with dividend disbursements from the companies to cover his personal income tax liability, and other benefits. Shriver's denial of minority shareholders' requests for scheduled, periodic dividend disbursements is a key element of his plan to oppress the minority shareholders and deprive them from receiving benefits of ownership in proportion to their shares of stock ownership. Another key element of Shriver's plan of oppression is his pattern and direction of the companies' imprudent and wasteful expenditure of exorbitant sums, as discussed above, which has been conducted with the knowledge that such expenditures

essentially come out of the pockets of the minority shareholders, since Shriver directs himself an exorbitant annual salary more than six times Dobkin's salary.

23. The conduct of Shriver, set forth in the preceding paragraphs, was done willfully and with malicious intent, to enrich himself and to oppress and damage the minority shareholders, by depriving or suppressing their reasonably expected rights and benefits of stock ownership in proportion to the respective shareholders percentages of stock ownership, in clear violation of fiduciary duties and duties of good faith and fair dealing owed to the minority shareholders by the majority shareholder Shriver at all relevant times, under West Virginia law. Shriver's conduct as majority shareholder was intended to, and has, proximately caused significant financial and emotional damages to the minority shareholders, and constitutes actionable breach of fiduciary duties owed, breach of duties of good faith and fair dealing owed, oppression, illegality and fraud.

24. The plaintiffs/minority shareholders are entitled to, and respectfully request reimbursement of all monetary damages proximately caused by Shriver's aforesaid oppressive misconduct. Those damages have been conservatively estimated to be in excess of \$830,000.00 just through 2012, pursuant to accounting calculations and analysis provided to the minority shareholders based on information that was available to the minority shareholders at the time. Given the fact that the conduct complained of has continued in 2013 and 2014, it is reasonably anticipated that access to and professional analysis of all documentation and information necessary to accurately assess the aforesaid amount of damages sustained by the minority shareholders as a proximate result of Shriver's oppressive misconduct will result in a considerably higher figure.

24. Based upon the aforesaid, the plaintiffs are entitled to and respectfully request the following alternative forms of relief available to minority shareholders under West Virginia law to protect them against oppressive conduct, as this Court deems appropriate pursuant to Masinter v. WEBCO Co., 164 W. Va. 241, 262 S.E.2d 433 (1980):

A. The issuance of an injunction that orders the immediate removal of defendant Shriver from any managerial duties or responsibilities with Action, to enable and ensure the company's competent operation and compliance with all pertinent laws and regulations; the immediate cessation of all acts of minority shareholder oppression by the defendant Shriver, including the immediate and significant reduction of Shriver's grossly excessive annual salary that is six times greater than Dobkin's; and the implementation of a schedule for reasonable profit distributions to minority shareholders by Action and Cousin's in proportion to each shareholder's respective percentages of ownership;

B. The issuance of an order requiring an itemized accounting of expenditures by Action and Cousin's for the years 2010, 2011, 2012, 2013, and 2014 through the date of the order, and the production of all documents necessary to an assessment of the legitimacy of the expenditures during those years;

C. An award of compensatory and punitive damages against Shriver for all acts of oppressive and malicious conduct towards the minority shareholders, and the damages that his conduct has caused;

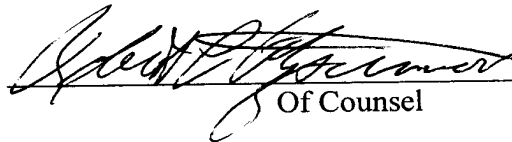
D. The issuance of an order that either requires the majority shareholder, Shriver, to purchase the shares of stock of Action Gaming owned by the minority shareholders, at a price determined by the Court to be a fair and reasonable price; or, alternatively, orders the dissolution of Action Gaming, and orders in its place the formation of two limited video lottery

companies approved by the West Virginia Lottery Commission, one owned by Shriver that would be assigned the contract rights to furnish limited video lottery terminals to 60% of the locations currently under contract with Action Gaming, and one owned by Joseph T. Dobkin and Laurie Dobkin McDermott that would be assigned the contract rights to furnish limited video lottery terminals to 40% of the locations currently under contract with Action Gaming.

Respectfully submitted,

**JOSEPH T. DOBKIN and LAURIE DOBKIN
McDERMOTT, *Plaintiffs*,**

By:


Of Counsel

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June 6, 2014

Via Hand Delivery

Mr. David R. Ealy
Clerk of the Circuit Court
Marshall County Courthouse
Moundsville WV 26041

**Re: Joseph T. Dobkin and Laurie Dobkin McDermott
v. David B. Shriver**

Dear Mr. Ealy:

Enclosed herewith please find the following with regard to the above-styled action:

- (1) A Civil Case Information Statement;
- (2) The original and 4 copies of a Complaint;
- (3) A check made payable to your order in the amount of \$180.00 representing the filing fee and fee for service of process upon the defendant by Sheriff; and

Will you please file the original Complaint, issue a Summons and have a copy of the Complaint and Summons served upon the defendant, as set forth on the enclosed Civil Case Information Statement.

I will also appreciate your time stamping a copy of the Complaint and returning it to my attention. If you have any questions regarding this matter, please do not hesitate to call.

Thanking you, I remain

Very truly yours,

FITZSIMMONS LAW FIRM PLLC



Robert P Fitzsimmons

RPF/klc
Enclosures

{00098646-1}

WEST VIRGINIA • OHIO • PENNSYLVANIA



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CIVIL CASE INFORMATION STATEMENT
CIVIL CASES

(Other than Domestic Relations)

In the Circuit Court, Marshall County, West Virginia

I. CASE STYLE:

Plaintiff(s)

Joseph T. Dobkin
122 Danfield Drive
Wheeling, WV 26003

and

Laurie Dobkin McDermott
18 Aaron Way
Wheeling, WV 26003

Case # 14-C-91K

Judge Kare

VS.

Defendant(s)

David B. Shriver
c/o Action Gaming
56 - 18th Street
Wheeling, WV 26003

**Days to
Answer**

30

Type of Service

Personal by Sheriff

Original and 4 copies of complaint enclosed/attached.

{00098649-1}

Plaintiffs: Joseph T. Dobkin, et al.

Case Number:

Defendant: David B. Shriver

II. TYPE OF CASE:

☒ General Civil

☐ Adoption

☐ Mass Litigation
(As defined in T.C.R. Rule XIX (c))

☐ Administrative Agency Appeal

☐ Civil Appeal from Magistrate Court

- ☐ Asbestos
- ☐ Carpal Tunnel Syndrome
- ☐ Diet Drugs
- ☐ Environmental
- ☐ Industrial Hearing Loss
- ☐ Silicone Implants
- ☐ Other: _____

☐ Miscellaneous Civil Petition

☐ Mental Hygiene

☐ Guardianship

☐ Medical Malpractice

☐ Habeas Corpus/Other Extraordinary Writ

☐ Other: _____

III. JURY DEMAND: ☒ Yes ☐ No

CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): _____/_____/_____

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY? ☐ Yes ☒ No

IF YES, PLEASE SPECIFY:

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: _____

Attorney Name: Robert P. Fitzsimmons Esq.

Firm: Fitzsimmons Law Firm PLLC

Address: 1609 Warwood Avenue
Wheeling, WV 26003

Telephone: (304) 277-1700

Dated: 6-6-14

Representing:

☒ Plaintiff ☐ Defendant
☐ Cross-Complainant ☐ Cross-Defendant

Signature